IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 7152/2005
(Smt. Saroj Deora Vs. State of Rajasthan & Ors.)

Date of Order : 08/02/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. R.S.Charan for the petitioner.
Mr. Rameshwar Dave, Dy.G.A. for the respondents.

BY THE COURT:-

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks direction to the extent of extending the benefits of maternity leave and other benefits to the petitioner applicable to the other government employees under Rule 103 of the Rajasthan Services Rules and to release the payment due against the respondents in lieu of maternity leave.

I have heard learned counsel for the parties.

It is contended by learned counsel for the petitioner that the controversy involved in the instant case stands concluded by a decision of this Court in Smt. Neetu Choudhary Vs. State of Rajasthan and Ors. 2005 WLC (Raj.) 608. It is

reported by the counsel for the parties that a special appeal filed against the decision in Smt. Neetu Choudhary Vs. State of Rajasthan and Ors. has also been dismissed by the Division Bench.

The facts and circumstances giving rise to the instant writ petition are that the petitioner was appointed on the post of Nurse Grade-III on urgent temporary basis under Rule 27 of the Rajasthan Medical and Health Subordinate Service Rules, 1965 (for short the Rules of 1965 hereinafter) on 15.12.2001 on a consolidated salary of Rs. 4500/- per month. The appointment order of the petitioner was passed in pursuance of the order dated 06.12.2001 issued by the Director, Medical and Health Services, Rajasthan, Jaipur vide Annex.1. The petitioner though appointed temporarily, but her services were extended from time to time by the respondent department. Initially the petitioner was appointed on temporary basis, however, subsequently, the respondent department has changed the nomenclature as that of contract basis and the other terms and conditions of the appointment remained as provided under the provisions of Rules of 1965 and therefore, the petitioner claims the benefit flowing under the Rules of 1965. By an application dated 16.2.2004 Annex.2, the petitioner sought to extend the benefit of maternity leave. However, the respondent State has issued a communication dated 30.10.2001 to the effect that the benefits

of maternity leave, casual leave, day off etc. are not admissible to the consolidated salary basis nursing employees. According to the petitioner, the respondent department extended the benefit of weekly leave to the contractual appointees by order dated 3.1.2004 and further extended benefit of 15 casual leave in a year and the travelling allowance and halt allowance to the contractual appointees by communication dated 23.7.2004. The respondent State has increased the maternity leave from 120 days to 135 days vide notification dated 06.12.2004. The petitioner approached to the respondent department for payment of maternity leave but the same has not been paid. Hence this writ petition.

A similar controversy came to be considered by this Court in Smt. Neetu Choudhary Vs. State of Rajasthan and Ors. (supra) wherein this Court relying on the order of the Government of Rajasthan being Order No. F.12 (1) F.11/54 dated 25.2.1955 declaring the temporary female Government servants entitled for maternity leave, held that the petitioner therein being a temporary female Government servant is entitled for the maternity leave under Rule 103 of the Rules of 1951 and the order dated 30.10.2001 cannot be made applicable upon the petitioner as she is working in temporary capacity though getting consolidated wages. On these premises, the writ petition was allowed and the respondents were directed to sanction maternity

leave to the petitioner as applied by her and all benefits consequential thereto be given to her.

In this view of the matter, the case of the petitioner is at par with that of decision of this Court in Smt. Neetu Choudhary Vs. State of Rajasthan and Ors. (supra) which has been affirmed by the Division Bench as reported by the counsel for the parties, and therefore, in my view, the writ petition deserves to succeed.

In the result, the writ petition is allowed and the respondents are directed to extend the benefit of maternity leave to the present petitioner as applied by her and all benefits consequential thereto be given to her within a period of three months from the date of filing of certified copy of this order before the competent authority. Stay petition also stands disposed of. There shall be no order as to costs.

(H.R.PANWAR),J.

rp